

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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Policies and Rules for the
Direct Broadcast Satellite Service

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IB Docket No. 98-21

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REPLY COMMENTS OF DIRECTV, INC.

DIRECTV, Inc. ("DIRECTV") hereby submits the following reply comments in the above-captioned proceeding.

I. INTRODUCTION

In this proceeding, a consensus of DBS providers, consumers, and competitors has emerged with respect to most of the issues raised in the Commission's Notice of Proposed Rulemaking ("*Notice*") regarding the rules that will govern the DBS service -- cable's most promising multichannel video programming distribution ("MVPD") competitor. The Commission should follow this encouraging industry consensus, even where it differs in some cases from the Commission's proposals in the *Notice*.

II. A CABLE/DBS CROSS-OWNERSHIP RESTRICTION IS UNNECESSARY PROVIDED THAT THE COMMISSION WILL BLOCK OR CONDITION PARTICULAR TRANSACTIONS THAT RAISE ANTICOMPETITIVE CONCERNS

The record demonstrates an overwhelming opposition to over-regulation in the DBS arena. Contrary to the National Cable Television Association's assertions,¹ most

¹ See NCTA Comments at 8.

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commenters agree that the DBS service is still “far from mature”² and remains sensitive to cumbersome regulatory burdens. Accordingly, there is general agreement that the Commission should preserve its historic flexible approach to regulating DBS.³

In particular, the vast majority of commenters do not believe that a blanket cable/DBS cross-ownership ban is necessary at this time. Instead, the parties favor continuation of the Commission’s current *ad hoc* public interest approach to DBS ownership issues to account for transactions or arrangements that pose a threat to emerging MVPD competition.⁴

Only three commenters favor a broad cable/DBS cross-ownership restriction.⁵ These and other commenters fear that cable/DBS cross-ownership arrangements, such as the Primestar consortium of the nation’s largest cable multiple system operators (“MSOs”), threaten MVPD competition. Specifically, Primestar’s combination of horizontal and vertical integration in the MVPD marketplace results in Primestar having the incentive to maximize revenues for its MSO owners’ incumbent cable operations, and to develop DBS spectrum in a manner that is complementary to, rather than competitive with, those cable operations. Such cable/DBS cross-

² See, e.g., Loral Comments at 4.

³ DIRECTV Comments at 2-3; see News Corp. Comments at 1-2 (stating that the Commission’s flexible regulatory structure “befits a nascent, rapidly-evolving technologically advanced service”); Tempo Comments at 2; NCTA Comments at 3-4; Coalition for Satellite Competition Comments at 5; Loral Comments at 4; see also Notice at ¶ 58.

⁴ See DIRECTV Comments at 11; USSB Comments at 7-8; BellSouth Comments at 3-5; Ameritech Comments at 3-5; UCC/Consumers Union Comments at 3; Primestar Comments at 6-16; NCTA Comments at 1-7; News Corp. Comments at 2-3; Time Warner Comments at 7-10; see also Wireless Cable Assoc. Comments at 2 (remaining neutral on whether across-the-board cable/DBS restrictions are necessary).

⁵ Univision Comments at 4-6; Natl. Rural Telecom. Coop. Comments at 3-7; Echostar Comments at 3 (supporting cable/DBS cross-ownership restriction “in principle”).

ownership also creates greater incentives for Primestar's MSO owners to deprive DBS competitors of access to the vast amounts of programming that they control.⁶ Thus, it is argued, a prophylactic rule prohibiting DBS ownership by cable interests would help to neutralize these concerns, and would confer predictability and consistency in addressing such issues.

DIRECTV emphatically agrees with the concerns expressed with respect to the pending Primestar-MCI assignment and understands why some parties favor an outright cross-ownership restriction. However, on balance, DIRECTV believes that the Commission's flexible regulatory structure for DBS should be sustained. If the Commission is willing to be vigorous in prohibiting specific anticompetitive cable/DBS arrangements -- such as the pending Primestar-MCI assignment -- then DIRECTV supports a case-by-case approach that can resolve competitive concerns regarding DBS ownership in a manner that is tailored to the dynamics of the MVPD marketplace and the context of particular transactions.⁷

III. THE COMMISSION SHOULD NOT ALTER CURRENT GEOGRAPHIC SERVICE REQUIREMENTS

In its opening comments, DIRECTV expressed the view that the Commission's current geographic service rules -- established only a few years ago -- are working to ensure that

⁶ See, e.g., Wireless Cable Assoc. Comments at 3-7 (arguing that cable/DBS cross-ownership may worsen the tenuous program access climate); Echostar Comments at 5 (arguing that Primestar would become a complement to, rather than a substitute for, cable).

⁷ For similar reasons, Univision's call to ban common ownership of more than one MVPD system serving a geographic area is unnecessary. See Univision Comments at 7. Likewise, Microcom's sweeping requests for the Commission to prohibit common ownership of more than one full-CONUS position and to ban exclusive programming agreements between non-cable-affiliated DBS operators and programming providers are neither necessary nor prudent, and could stifle the development of the very providers that are just now emerging to render MVPD competition. See Microcom Comments at 7-8.

DBS service will soon become a reality for potential subscribers in Alaska and Hawaii, as well as other U.S. territories. The record supports this conclusion. In addition to DIRECTV's current service to major portions of Alaska,⁸ Tempo reports that it has "designed, constructed, and launched a satellite that was specifically designed to permit service to Alaska, Hawaii and Puerto Rico."⁹ Similarly, Echostar, which currently serves Alaska from its 119° W.L. orbital location, states that it will provide DBS service to both Hawaii and Alaska with the launch of its next satellite.¹⁰ Market forces, in other words, in conjunction with the Commission's current geographic service requirements, have resulted, or will result, in a natural geographic expansion of DBS service to serve non-CONUS U.S. states, territories, and possessions.¹¹

Understandably, the States of Alaska and Hawaii are concerned with the pace of this expansion. The faster that DBS systems can be deployed to serve these areas, the faster that consumers residing in these areas will finally have a viable MVPD competitor to their local franchised cable systems. However, deploying -- or upgrading -- a DBS system takes time. The effect of the Commission's 1995 adoption of geographic service requirements is only now being realized. Those requirements, working in tandem with the proper functioning of the DBS MVPD

⁸ As Microcom acknowledges, DIRECTV's service covers Southeast Alaska, as well as parts of South Central Alaska and the Aleutian Peninsula. Microcom Comments at 2.

⁹ Tempo Comments at 6.

¹⁰ Echostar Comments at iii, 9, 10 n.21; Microcom Comments at 2 (noting that the Dish Network presently provides coverage over most of Alaska except for the Aleutian Peninsula and the far northwest).

¹¹ Hawaii notes that its residents may receive DBS service from two providers -- Echostar and Tempo -- by the end of the year. State of Hawaii Comments at 2.

market segment, should be allowed to continue the expansion of full-service DBS to Alaska, Hawaii, Puerto Rico, and other U.S. territories and possessions.

By contrast, a more restrictive “off-shore states” policy proffered by Hawaii,¹² which would require DBS licensees to provide full DBS service to Hawaii and Alaska before being eligible to provide service from an eastern orbital location beyond their existing assignments, is not the answer. Many commenters oppose such a policy, and DIRECTV agrees that it may in fact undermine the public interest by placing artificial constraints on DBS service development and expansion.¹³ While Hawaii claims that the policy is necessary because the mainland U.S. market could become saturated, leaving DBS providers with little incentive to serve Hawaii,¹⁴ DIRECTV fails to follow this logic. If the contiguous U.S. market becomes saturated, DBS service providers will naturally look elsewhere for expansion opportunities. More importantly, the Commission must be careful not to adopt inadvertently a requirement that would penalize current DBS systems that use satellites that simply are not configured technically to provide full Alaska or Hawaii service.

In particular, the Commission should not alter its rules to require DBS licensees who were granted their authorizations prior to January 19, 1996 to prove that they serve Alaska and Hawaii before being granted license extensions or renewals of their satellite authorizations.¹⁵ While Hawaii notes that newer, replacement satellites may be technically capable of serving its

¹² State of Hawaii Comments at 8; *see also* State of Alaska Comments at 2 (supporting Hawaii’s proposals, including the “off-shore states” policy).

¹³ *See* Echostar Comments at iii, 9.

¹⁴ State of Hawaii Comments at 8.

¹⁵ *See id.* at 3.

state,¹⁶ Hawaii offers no compelling justification for subjecting DBS licensees that request extensions or renewals of their *existing* satellite systems -- which surely will utilize satellites with useful lives that extend beyond their initial license terms¹⁷ -- to the enormous and infeasible expense of reconfiguring existing systems to achieve what they were not designed to do.

Hawaii's other proposals -- also laudable in purpose -- are similarly over-regulatory and unnecessary in today's DBS marketplace. For example, Hawaii requests that the Commission clarify that "full" DBS service under Section 100.53 means DBS programming of equal value with that offered to subscribers in the continental U.S. at equivalent prices.¹⁸ Yet, again, DBS competition, which is emerging in Alaska, Hawaii and other U.S. territories, is a better way to ensure enhanced program offerings and competitive pricing for residents of these locations.

Finally, DIRECTV agrees that as long as a DBS licensee has developed DBS service at its eastern orbital location, especially if the licensee is serving Alaska or Hawaii where such service is technically feasible, then the DBS permittee should be afforded a reasonable additional period of time to put its western location to use.¹⁹ The Commission must ensure that

¹⁶ *Id.* at 6.

¹⁷ See Echostar Comments at iii ("[P]ermittees with operational satellites that are not equipped to serve Alaska and Hawaii should not be prevented from receiving a second license term and operating their satellite throughout its useful life."); *id.* at 10 (noting that Directsat's eastern satellite is not equipped to serve Alaska and Hawaii).

¹⁸ State of Hawaii Comments at 3, 7-8, 9.

¹⁹ See Primestar Comments at 25-26. In fact, if anything, the record shows that the Commission should allow more flexibility and "give special consideration to the problems inherent in developing DBS service using the western orbital locations." *Id.* at 23 n.48; see also Loral Comments at 5 (stating that the technical limitations of western orbital locations may affect the time for DBS permittees to develop those orbital

any geographic service requirement that it imposes upon DBS providers not mandate the impossible. Thus, any requirement affecting eastern orbital slots must account for technical limitations at each location.

Developments in the DBS marketplace since 1995 confirm that the geographic service requirements then imposed are indeed working. In conjunction with these rules, market forces that are in place today encourage DBS operators to maximize their service offerings through geographic expansion where technically feasible.²⁰ The Commission should permit DBS operators to retain the discretion and flexibility to respond to market dynamics without artificial constraints. The existing geographic service rules should not be changed.

IV. TECHNICAL ISSUES

SkyBridge offers a number of comments designed to facilitate its efforts to throw open the DBS downlink frequency bands to entry by NGSO satellite systems. To that end -- ironically in a proceeding designed to promote the healthy development of DBS as one of the most important emerging MVPD industries -- SkyBridge proffers changes to the DBS rules that would severely threaten existing and future DBS systems. Instead, as DIRECTV has urged, the Commission's rules in this proceeding should protect and promote further development of these systems, not hinder them.

Specifically, SkyBridge argues that DBS systems should only receive interference protection to the extent that they meet certain receive antenna performance standards, on the

resources); DIRECTV Comments at 18-19 (noting the difficulties of providing economically sustainable service to U.S. subscribers from some western orbital locations).

²⁰ See Tempo Comments at 6.

grounds that “the lack of enforceable antenna performance requirements permits U.S. DBS systems to be wasteful of spectrum resources, with no adverse consequences.”²¹ However, this assertion is simply wrong. The systems both in use and in development for service to the domestic U.S. market are not “wasteful” of spectrum, and in fact are extremely responsible technical solutions that are viable in the marketplace and compatible with each other. Because these systems are very similar in their characteristics and because of technological innovation, these systems, though they diverge from the reference parameters of the Region 2 Plan, are able to coexist.²² By contrast, had DIRECTV, Echostar, Tempo or USSB, for example, chosen to implement a DBS system using Plan reference parameters, these operators would have found themselves with unattractive services and likely few subscribers -- which is a true waste of spectrum resources.

Correspondingly, SkyBridge’s proposal to use Recommendation ITU-R BO.1213 “as a minimum” basis for antenna performance standards²³ would be costly, unnecessary and should be rejected. This recommendation was adopted for Regions 1 and 3 in the ITU’s quest to satisfy the requirements of developing nations by maximizing the number of channels in the ITU Plans in order to accommodate spectrum requests from all countries. DIRECTV believes that

²¹ Comments of SkyBridge at 5.

²² On the subject of coexistence, TEMPO has asked that the Commission to maintain “the basic 0.4° orbital spacing between co-located satellites to reduce the potential for interference between operators with cross-polarized channel assignments.” Comments of TEMPO at 5. It is unclear what TEMPO has in mind, but DIRECTV believes that the Commission should not alter the orbital spacing as defined in Appendix 30, Annex 7, Paragraph B.

²³ SkyBridge Comments at 6.

conforming to this pattern would add significant cost to DBS subscriber antennas, and would significantly constrain the development of the U.S. DBS industry. There is no sound policy basis or need for such an antenna pattern to be adopted for Region 2.

Similarly, there simply is no merit to SkyBridge's blatant attempt to strip U.S. DBS operators even of the protection criteria they currently receive under the ITU Plans. SkyBridge states that it is "wholly inappropriate to apply to modified BSS systems protection criteria that have been derived for BSS systems having the reference parameters contained in the plans."²⁴ But the fact is that modified parameter systems as well as reference parameter systems *are* protected in the Region 2 Plan, to the level specified in Annex 4 of Appendix 30. And there is good reason to preserve this protection. It is anticipated that future DBS technologies will require C/N ratios higher than present modified parameter systems require to support higher capacity systems -- and these higher C/N ratios may require protection at least to the levels specified in Annex 4, or perhaps even higher. Thus, to adjust the current Annex 4 protection levels on the basis of current modified parameter systems -- as SkyBridge would have the Commission and the ITU do -- is extremely shortsighted, and certainly not in the interests of promoting the continued development of U.S. DBS systems.

SkyBridge's comments at bottom constitute an effort to insinuate DBS/NGSO sharing issues -- and NGSO-favorable technical parameters -- into this proceeding. To the extent that the Commission addresses such issues at all, it should ensure that NGSO operations will truly be secondary in the DBS frequency bands, and pose no hindrance to either existing modes

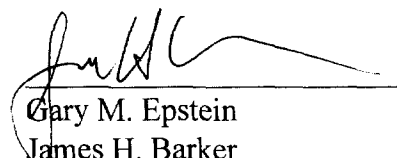
²⁴ *Id.* at 9.

of DBS operation or future service improvements using higher power spacecraft. SkyBridge's proposal should be rejected.

V. CONCLUSION

DIRECTV respectfully requests that any modifications to the DBS rules be accomplished as set forth in its initial and these reply comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary M. Epstein", is written over a horizontal line.

Gary M. Epstein

James H. Barker

Johanna E. Mikes*

LATHAM & WATKINS

1001 Pennsylvania Avenue, N.W.

Suite 1300

Washington, D.C. 20004

(202) 637-2200

* Admitted in Massachusetts only.

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Counsel for DIRECTV, Inc.